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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD EDWARD BUTTERFIELD et
al.,

Defendants and Appellants.

E061972

(Super.Ct.No. RIF1300143)

OPINION

APPEAL from the Superior Court of Riverside County. Bernard Schwartz, Judge.
Affirmed.

Richard de la Sota, under appointment by the Court of Appeal, for Defendant and
Appellant Eric LaMichael Deon Williams.

David McNeil Morse, under appointment by the Court of Appeal, for Defendant
and Appellant Ronald Edward Butterfield.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,
Anthony DaSilva, and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and

Respondent.

I

INTRODUCTION

Defendants Ronald Edward Butterfield and Eric LaMichael Deon Williams (defendants) appeal from judgment entered following jury convictions for aggravated mayhem,¹ torture,² and assault with a deadly weapon.³ The jury also found true defendants used a deadly weapon when they committed aggravated mayhem and torture (counts 2 and 3). In addition, the jury found Butterfield guilty of attempted voluntary manslaughter,⁴ as a lesser crime of attempted premeditated murder⁵ charged in count 1. The jury found true the special allegations against Butterfield that he personally inflicted great bodily injury (GBI) when he committed attempted voluntary manslaughter and assault with a deadly weapon, and Butterfield used a deadly weapon when he committed attempted voluntary manslaughter. Butterfield and Williams were sentenced to an aggregate term of one year plus seven years to life in prison.

Defendants contend the trial court violated section 1009 and defendants' Sixth Amendment right to notice of the charges against them by allowing the prosecution to

¹ Penal Code section 205; count 2. Unless otherwise noted, all statutory references are to the Penal Code.

² Section 206; count 3.

³ Section 245, subdivision (a); count 4.

⁴ Sections 192 and 664.

⁵ Sections 187 and 664.

amend the information to add charges of aggravated mayhem and torture (counts 2 and 3). We disagree and therefore affirm the judgment.

II

FACTS AND PROCEDURAL BACKGROUND

Because this appeal only concerns the sufficiency of evidence presented during the preliminary hearing, the following summary of facts is limited to the evidence presented at the preliminary hearing, consisting of Riverside Police Department Detective Greg Rowe's testimony regarding facts obtained from investigative interviews.

A. Preliminary Hearing Testimony

Rowe testified he was assigned to investigate a report of attempted murder committed on January 12, 2013, at 3:00 a.m. The incident occurred at the Sterling Highlander Apartments on Iowa Street in Riverside County. Rowe interviewed Konstantinos Kritkos on January 16, 2013. Kritkos stated that, while he was at a party that evening at the Sterling Highlander Apartments, four unknown, uninvited men entered the apartment where the party was held. The four suspects were asked to leave. This led to an argument among the uninvited men and the party attendees.

While people at the party were trying to eject the four suspects, David Alexander Santos punched one of the uninvited men (Williams) in the mouth. The four suspects were forced out of the apartment and the door was then shut and locked behind them. As the men were kicked out of the apartment, one of the men said he was going to return with "a heater." The four suspects attempted to kick down the door. The men damaged

the door but were unable to reenter the apartment. The police and a repairman were called. By the time the police arrived several minutes later, the four suspects had left.

Kritkos remained at the party with Santos for another hour and a half. The two left the party together, along with Nathan Aquino and Adam Antoun. As Kritkos, Santos, Aquino, and Antoun exited the apartment building elevator, they saw the four suspects waiting in the parking lot. The four suspects began following them. Kritkos, Santos, Aquino, and Antoun started running, with the four suspects chasing them. Antoun and Aquino broke off from the group and ran in different directions. Santos and Kritkos ran together in another direction. Kritkos noticed one of the four suspects had a blue bat (Butterfield), another had a hammer (Mark Russell), and another had a knife (Williams).

During the chase, the four suspects separated. Williams pursued Antoun. Butterfield and Russell chased Santos. Kritkos did not notice the fourth man. As Kritkos and Santos were chased, they remained together, with Kritkos about six or seven feet from Santos. Butterfield hit Santos in the back with the bat, knocking him to the ground. As Santos lay motionless, Butterfield stomped on Santos's head and hit him in the head with the bat. Santos did not defend himself. Russell also kicked Santos.

Kritkos tried to intervene but Russell kept Kritkos away. Kritkos saw Williams walking away from Antoun, towards Santos and Butterfield. The beating of Santos lasted a relatively short time. It ended when the four suspects ran away. Kritkos identified Butterfield and Williams from photographs. Kritkos was not able to identify the other two men.

Rowe interviewed Aquino, who told him he was at the party when the four suspects appeared. Aquino's police statement was consistent with Kritkos's statement. Aquino stated that, as the four suspects were pushed out of the apartment, he heard one of the suspects say they were going to return "with a burner or a heater."

After the party, as Kritkos, Aquino, Santos, and Antoun left the apartment and took the elevator down to the parking lot. As they left the elevator, they noticed the four suspects. The suspects were waiting in the parking lot area. The suspects began following Kritkos, Aquino, Santos, and Antoun, who began running from the suspects. Aquino separated from Kritkos, Santos, and Antoun. Aquino ran to the right and the other three ran to the left in the parking lot. Russell, who had a hammer, chased after Aquino. Aquino told Russell, "I don't know you." I "wasn't involved in this." Russell stopped chasing Aquino and joined the other three suspects, Butterfield, Williams, and a third person. Aquino ran into the apartment complex and hid. Aquino identified Butterfield as one of the suspects who was at the party and who, after the party, chased after Aquino's companions in the parking lot.

During Antoun's interview, Antoun told Rowe he was also at the party. Antoun gave the same account of the events as Kritkos and Aquino gave. He saw the four suspects at the party. The others at the party attempted to get the uninvited men to leave by "funnel[ing]" them out the apartment door. The suspects broke the door. Antoun heard one of the suspects say the suspects were going to return with "a heater." Antoun left the party about an hour and a half later, when Kritkos and Aquino left. When Kritkos, Aquino, Santos, and Antoun exited the elevator, they noticed the suspects in the

parking lot. The suspects began following Kritkos, Aquino, Santos, and Antoun, who then began running. Williams chased after Antoun with a knife and told Antoun, who was calling 911 as he ran, to get off the phone. Williams was about 10 feet from Antoun. Antoun put the phone down and let it ring.

Antoun saw two of the other suspects chase Santos. Butterfield hit Santos in the head with a bat hard enough to kill him and kicked him. Russell kicked Santos in the stomach or torso area. Williams, who had a knife, walked toward Butterfield, Russell, and Santos. The suspects then ran away. Antoun was about 30 feet from Santos. Santos was unconscious. Antoun did not positively identify Williams as the suspect with the knife but said he thought Williams might have been the suspect. Antoun described the knife as having a black handle and eight-inch, fixed blade. Antoun told Rowe, who showed Antoun photos, that he recognized the suspects.

Rowe interviewed Russell on January 12, 2013, at 6:00 a.m. Russell said he went to the party on January 12, 2013. He was with Williams and Butterfield. Russell told Rowe he was present during the assault on Santos. Russell said he had a bat and was trying to protect himself.

Santos described his injuries to Rowe. Santos said he had a “a subarachnoid hemorrhage,” skull fractures, and 50 staples in his head. He was in a coma for five days.

B. Procedural Background

After hearing Rowe’s preliminary hearing testimony and argument by the parties’ attorneys, the trial court held Butterfield, Williams, and Russell to answer, finding there was sufficient cause to believe each defendant was guilty as alleged in the complaint.

The court found regarding count 1 (attempted premeditated murder) the three defendants inflicted GBI upon Santos (§ 12022.7, subd. (a)), and Butterfield and Williams used deadly weapons (§ 12022, subd. (b)(1)). The court found, regarding count 2 (assault with a deadly weapon), that Butterfield and Williams inflicted GBI upon Santos (§ 12022.7, subd. (a)). Regarding count 3 (assault with a deadly weapon), the court found that Williams personally inflicted GBI upon Santos (§ 12022.7, subd. (a)).

On April 9, 2013, the People filed an information. In count 1, the People alleged that on January 12, 2013, the three defendants committed attempted premeditated murder of Santos (§§ 664, 187). Special allegations included the three defendants personally inflicted GBI upon Santos (§ 12022.7, subd. (a), and 1192.7, subd. (c)(8)); Butterfield and Russell personally used deadly and dangerous weapons, a bat or hammer (§ 12022, subd. (b)(1), and 1192.7, subd. (c)(23)); and Williams personally used a deadly and dangerous weapon, a knife (§ 12022, subd. (b)(1), and 1192.7, subd. (c)(23)). The information further alleged in count 2 that Butterfield and Russell assaulted Santos with a deadly weapon, a bat or hammer (§§ 245, subd. (a)(1), 667, and 1192.7, subd. (c)(31)). Count 3 alleged Williams assaulted Santos with a deadly weapon, a knife (§§ 245, subd. (a)(1), 667, and 1192.7, subd. (c)(31)). The information alleged as to counts 2 and 3, that the three defendants personally inflicted GBI upon Santos (§ 12022.7, subd. (a), and 1192.7, subd. (c)(8)). The three defendants pled not guilty to the charges and denied the special allegations.

On January 8, 2014, the People filed a trial brief, in which the People requested leave to file a second amended information, adding two charges, aggravated mayhem

(§ 205) and torture (§ 206). Over the three defendants' objections, the trial court granted the People's request to amend. The trial court also granted Russell's motion to sever his trial from Butterfield and Williams's joint trial.⁶

On January 21, 2014, the trial court denied the three defendants' section 995 motion to set aside the second amended information. The court rejected defendants' contention there was insufficient preliminary hearing evidence of mayhem and torture.

C. Amended Information

On January 21, 2014, the court granted the People leave to file a third amended information, which restored the assault with a deadly weapon charge left out of the second amended information. On February 4, 2014, the People filed a fourth amended information, which made changes to personal use of weapon allegations. The changes made in the third and fourth amended information are not pertinent to this appeal.

The operative pleading, the fourth amended information, contains the following counts: count 1, against the three defendants (Butterfield, Williams, and Russell), for attempted premeditated murder of Santos, with special allegations of Butterfield inflicting GBI, and Butterfield and Williams using deadly weapons (a bat and knife, respectively); count 2, aggravated mayhem, with special allegations of Butterfield and Williams using deadly weapons (a bat and knife, respectively); count 3, torture, with special allegations of Butterfield and Williams using deadly weapons (a bat and knife,

⁶ Russell is not a party to this appeal.

respectively); and count 4, assault with a deadly weapon with a bat, and by force likely to cause GBI, with the special allegation Butterfield personally used a deadly weapon, a bat.

Separate juries were selected for Butterfield and William's joint trial, with voir dire beginning on February 4, 2014. On February 28, 2014, the jury found Butterfield guilty of attempted voluntary manslaughter, as a lesser crime of attempted premeditated murder (count 1); aggravated mayhem (count 2); torture (count 3); and assault with a deadly weapon (count 4). The jury also found true the special allegations that Butterfield personally inflicted GBI as to counts 1 and 4; and used a deadly weapon, a bat, as to counts 1, 2, and 3.

On February 28, 2014, a separate jury found Williams guilty of aggravated mayhem (count 2); torture (count 3); and assault with a deadly weapon (count 4). The jury also found true the special allegations that Williams personally used a deadly weapon, a knife, as to counts 2 and 3. Williams was found not guilty of count 1, attempted murder.

III

SUFFICIENCY OF PRELIMINARY HEARING EVIDENCE

The original information charged defendants with attempted premeditated murder and assault with a deadly weapon. Butterfield and Williams (defendants) contend the trial court erred in permitting the prosecution to amend the information to add mayhem and torture charges (counts 2 and 3) a month before trial. Defendants maintain they were prejudiced by the amendment by not receiving notice of the new charges at the preliminary hearing. Defendants claim the court's action deprived them of their due

process rights to prepare a defense. We disagree. The new charges were added a month before the trial and were sufficiently supported by testimony presented at the preliminary hearing and by reasonable inferences deduced from the testimony.

A. Applicable Law

A court may allow amendment of an accusatory pleading at any time up to and including the close of trial so long as there is no prejudice to the defendant. (*People v. Graff* (2009) 170 Cal.App.4th 345, 361.) An indictment or accusation, however, “cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination.” (§ 1009.) “Section 1009 specifically proscribes amending an information to charge an offense not shown by the evidence taken at the preliminary hearing.” (*People v. Winters* (1990) 221 Cal.App.3d 997, 1007 (*Winters*).)

“[T]he role of the accusatory pleading is to provide notice to the defendant of the charges that he or she can anticipate being proved at trial. ‘When an accusatory pleading alleges a particular offense, it thereby demonstrates the prosecution’s intent to prove all the elements of any lesser necessarily included offense. Hence, the stated charge notifies the defendant, for due process purposes, that he must also be prepared to defend against any lesser offense necessarily included therein, even if the lesser offense is not expressly set forth in the indictment or information.’ [Citation.]” (*People v. Anderson* (2006) 141 Cal.App.4th 430, 445.) “[A]t a minimum, a defendant must be prepared to defend against all offenses of the kind alleged in the information as are shown by evidence at the preliminary hearing to have occurred within the timeframe pleaded in the information.’

[Citations.]” (*People v. Jones* (1990) 51 Cal.3d 294, 317.) The trial court’s accession to an amendment to the information, including the addition of counts, is reviewed for abuse of discretion. (*People v. Bolden* (1996) 44 Cal.App.4th 707, 716; *Winters, supra*, 221 Cal.App.3d at p. 1005.)

B. Mayhem

Defendants contend there was insufficient evidence presented during the preliminary hearing putting defendants on notice of the additional count of mayhem. Defendants argue there was no preliminary hearing evidence establishing that Santos’s injuries were permanent or that his injuries would have resulted in a permanent disability or disfigurement.

Section 205 provides that a person is guilty of aggravated mayhem “when he or she unlawfully, under circumstances manifesting extreme indifference to the physical or psychological well-being of another person, intentionally causes permanent disability or disfigurement of another human being or deprives a human being of a limb, organ, or member of his or her body. For purposes of this section, it is not necessary to prove an intent to kill.”

While, as defendants assert, it is not enough that Santos suffered serious injuries, there was sufficient preliminary hearing evidence that his head injuries were highly likely to cause permanent disability or disfigurement. Such evidence noted by the trial court included Rowe’s testimony that Santos described his injuries as ““a subarachnoid hemorrhage,”” skull fractures, and 50 staples in his head. In addition, he was in a coma for five days. There was also testimony that, after Butterfield hit Santos in the back with

a bat, knocking Santos to the ground unconscious, Butterfield hit Santos in the head with the bat, and kicked and stomped on his head. Antoun told Rowe he saw Butterfield hit Santos with the bat on the top of his head hard enough to kill him. This evidence supported a reasonable inference Santos's head injuries were catastrophic and resulted in permanent disability or disfigurement.

Evidence of Santos's head injuries and manner in which they occurred also supports the requisite element of intent, which defendants argue is not supported by any preliminary hearing evidence. Specific intent to maim is an essential element of aggravated mayhem. (§ 205; *People v. Quintero* (2006) 135 Cal.App.4th 1152, 1167 (*Quintero*).) “[S]pecific intent to maim may not be inferred solely from evidence that the injury inflicted actually constitutes mayhem; instead, there must be other facts and circumstances which support an inference of intent to maim rather than to attack indiscriminately.” (*People v. Ferrell* (1990) 218 Cal.App.3d 828, 835 (*Ferrell*).) Such intent may be inferred ““from the circumstances attending an act, the manner in which it is done, and the means used, among other factors.”” (*Quintero*, at p. 1162.) For example, evidence that a defendant's attack was aimed at a vulnerable part of the victim's body, such as the head, supports an inference that the defendant specifically intended to cause a maiming injury. (*Ibid.*; *People v. Park* (2003) 112 Cal.App.4th 61, 69 (*Park*).)

Here, the preliminary hearing evidence demonstrated that the defendants' attack was aimed at Santos. There was evidence defendants attacked Santos because he punched Williams in the mouth during a party. After defendants were forced to leave the party, they retrieved weapons and waited an hour and a half for Santos to exit the

apartment building, with the intent to attack Santo in the parking lot. None of Santos's companions were attacked. When Russell began chasing Aquino and Aquino told him he was not involved in the fight at the party, Russell left Aquino and joined the other defendants who were attacking Santos. Likewise, Williams initially chased Antoun, but after telling Antoun not to call 911, Williams left Antoun without attacking him and joined the others who were beating Santos.

Not only did the evidence demonstrate Santos was the intended target of the attack, as opposed to being the victim of an indiscriminate attack, the preliminary hearing evidence supported a reasonable inference that Butterfield aimed the attack at Santos's head, a vulnerable part of Santos's body. A reasonable inference could further be made that the manner in which Butterfield attacked Santos by whacking his head with a bat several times, full force, kicking his head, and stomping on his head while Santos lay unconscious on the ground, created a very high probability of permanent, catastrophic, if not lethal, injury. (*Quintero, supra*, 135 Cal.App.4th at p. 1163 [substantial evidence of specific intent to maim where defendant focused a knife attack on the victim's head, stopping after maiming the victim's face]; *Park, supra*, 112 Cal.App.4th at p. 69 [substantial evidence of specific intent to maim based, in part, on the scope of the attack, which was limited to victim's head, resulting in eight broken teeth]; *Ferrell, supra*, 218 Cal.App.3d at pp. 835-836 [specific intent to maim may be inferred from defendant shooting the victim in the neck at close range, causing her to become permanently paralyzed, because such a shot was highly likely to disable permanently and because the attack was directed and controlled].)

Williams cites *People v. Lee* (1990) 220 Cal.App.3d 320 for the proposition there was insufficient evidence of mayhem. In *Lee*, the defendant punched the victim three times in the face and kicked him twice in the body. *Lee* is distinguishable. In *Lee* the court held there was insufficient evidence of the requisite intent needed to support the defendant's aggravated mayhem conviction. The court concluded the evidence showed no more than a sudden, indiscriminate, and unfocused battering of the victim's body. Unlike in the instant case in *Lee*, there was no evidence of motive for attacking the victim and no use of deadly weapons. Here, there was evidence showing a controlled, directed, limited attack motivated by revenge, from which the trial court could reasonably infer that defendant specifically intended to disable or disfigure Santos permanently. (*Id.* at p. 326.)

C. Torture

We also reject defendants' contention there was no evidence introduced during the preliminary hearing of torture. Under section 206, "Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture. [¶] The crime of torture does not require any proof that the victim suffered pain."

Torture has two elements: (1) a person inflicts great bodily injury upon another person, and (2) the person inflicting the injury does so with the intent to cause cruel and extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose. (*People v. Baker* (2002) 98 Cal.App.4th 1217, 1223.) Although torture

is a specific intent crime (*People v. Barrera* (1993) 14 Cal.App.4th 1555, 1573), it focuses on the mental state of the perpetrator, and not on the extent of the pain or injuries inflicted. (*People v. Jung* (1999) 71 Cal.App.4th 1036, 1042-1043 (*Jung*).) Section 206 does not require intent to inflict prolonged pain. (*People v. Aguilar* (1997) 58 Cal.App.4th 1196, 1204.)

Defendants argue the preliminary hearing evidence was insufficient to support a torture charge because Santos's injuries were not as aggravated as those in other cases in which the evidence was found sufficient to support a torture conviction. Defendants also argue there was no evidence defendants intended to inflict cruel and extreme pain. But as explained in *Jung, supra*, 71 Cal.App.4th at page 1042, "[s]ection 206 expressly eliminates the pain of the victim as an element of the offense. In addition, all that is required as to the nature of the injury is 'great bodily injury,' i.e., 'a significant or substantial physical injury.' (§ 12022.7, subd. (e).) Abrasions, lacerations, and bruising can constitute great bodily injury. [Citation.]" The court in *Jung* notes that section 206 rightfully places the emphasis on the perpetrator, "who for revenge or other prohibited purpose, inflicts great bodily injury on the victim and intends to cause the victim severe pain and suffering. That other victims of torture may have suffered more than the victim in this case sheds no light on the sufficiency of the evidence of defendants' intent to cause [the victim] severe pain and suffering." (*Jung, supra*, 71 Cal.App.4th 1043.)

Here, the circumstances of the offense establish defendants' intent to cause Santos to endure severe pain and suffering. The preliminary hearing evidence supports reasonable inferences that defendants targeted Santos out of revenge for punching

Williams in the mouth while being ejected from the party. Defendants threatened to return with a “heater” (gun); kicked and damaged the apartment door; retrieved weapons, including a baseball bat, hammer, and knife; and then waited an hour and a half in the parking lot for Santos to leave the party. When Santos and his companions stepped out of the apartment building elevator, defendants targeted Santos and brutally beat him.

Butterfield chased after Santos and hit him with a bat, knocking him down, and then hit Santos in the head with a baseball bat with enough force to kill him, while Santos lay motionless and defenseless on the ground. Butterfield continued to beat Santos, kicking him in the head and stomping on his head. There was also evidence that Williams aided and abetted Butterfield in brutally beating Santos by chasing Santos and his companions when they emerged from the apartment building; ordering Antoun to get off the phone when Antoun attempted to call 911; and then joining Butterfield in beating Santos. There was also ample evidence presented at the preliminary hearing establishing the seriousness of Santos’s injuries. The preliminary hearing evidence was more than sufficient to show that Santos suffered GBI, i.e., significant or substantial physical injuries, and that defendants inflicted such injuries for revenge, with intent to cause Santos severe pain and suffering.

The trial court therefore did not abuse its discretion in allowing the prosecution to amend the information to add charges of mayhem and torture. The preliminary hearing evidence was sufficient to support both charges.

IV
DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.